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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 301

EDWARD G. BUDD MANUFACTURING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITIONER'S REPLY TO BOARD'S MEMORANDUM IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI AS PRAYED

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Due to the shortness of time, and because some of the argument contained in the "Memorandum for the National Labor Relations Board" is answered in petitioner's brief in support of its petition for certiorari, this reply is limited.

I.

GENERAL SAVINGS STATUTE DOES NOT APPLY

Neither the facts of this case, nor the authorities, support the Board's contention (p. 13 of its Memorandum)

that 1 U. S. C. A. 29 (Act of February 25, 1871, C. 71, Sec. 4, 16 Stat. 431) is applicable here. The section reads:

> "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

Of this statute this Court said in *Great Northern Railway Company v. United States,* 208 U. S. 452, 465:

> "• • • As the section of the Revised Statutes in question has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment. But while this is true the provisions of Sec. 13 are to be treated as incorporated in and as a part of subsequent enactments, and therefore under the general principles of construction requiring, if possible, that effect be given to all parts of a law the section must be enforced unless either by express declaration or necessary implication, arising from the terms of the law, as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions of Section 13."

1.

Congress, both in Title 1 of the Labor Management Relations Act, 1947 (Public Law 101—80th Congress, Chapter 120—1st Session), which is the portion of the 1947 statute amending the National Labor Relations Act, and in the bills which subsequently became Title I, clearly showed its intention to regard Title I not as a repealing

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statute by rather as an amendatory act. It uses some form of the word "amend" throughout. "Repeal" is not mentioned.

The title of the Act reads, in part, "To *amend* the National Labor Relations Act * * *." (Emphasis furnished unless otherwise designated.)

Title I is entitled by Congress as "*Amendment* to the National Labor Relations Act."

The first sentence of Sec. 101 of the Act reads: "The National Labor Relations Act is hereby *amended* to read as follows: * * *"

In Sec. 3 (a) of Sec. 101 Congress specifically refers to the Board as it existed under the Act "prior to its *amendment*."

In Sec. 102, entitled "Effective Date of Certain Changes," Congress speaks of "the National Labor Relations Act as *amended* by this title * * *."

In Sec. 104 of Title I Congress says that "The *amendments* made by this title shall take effect sixty days after the date of the enactment of this Act * * *."

There is no repealing section in Title I nor in the Act.

So that as far as the language of the Title is concerned, we repeat that Congress throughout uses only some form of "amend."

An examination of the House Bill (H. R. 3020), as reported by the House Committee on Education and Labor, discloses that the bill was considered as a bill to amend the National Labor Relations Act. Sec. 101 reads "The National Labor Relations Act is hereby *amended* to read as follows: * * *" Nor is there any repealing section in the Bill.

The same is true of the Senate Bill (S. 1126), as reported by the Senate Committee on Labor and Public Welfare. The title of the bill, the title of Title I, and the first sentence under Title I each use some form of the word "amend." There is no repealing section in the Bill.

Therefore it is clear that Congress, both in the Act and in the bills, viewed Title I as an amendment and not as a repeal statute.

Moreover, an examination of Title I discloses that each section of the Title follows the same section number, with the same subject matter in each section and in many instances using the same language, as does the National Labor Relations Act as enacted in 1935, excepting that one new section, numbered 14, is inserted near the end of the 1947 statute, which section 14 provides that nothing in the Title prohibits a supervisor from becoming a member of a union, etc., and provides that nothing in the Title should be construed as setting aside the effect of any state or territorial law prohibiting the closed or union shop. Also, there is added at the end of Title I three sections entitled "Effective Date of Certain Sections." Otherwise, we repeat, Title I is devoted section by section to the same subject matters as the sections of the 1935 National Labor Relations Act, with much of the language of the 1935 Act retained.

The Circuit Court of Appeals for the Second Circuit, in an opinion filed November 5, 1947, in *National Labor Relations Board v. Sandy Hill Iron & Brass Works*, ... Fed. 2d ...., 21 L. R. R. M. 2021, said generally as to the effect of the Labor Management Relations Act, 1947:

> "• • • It did amend the first statute above cited, the Wagner Act, in certain respects but in others left it unaltered."

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All these facts indicate that the intention of Congress was solely to amend the 1935 statute, and that Congress did not consider Title I as a repealing statute.

2.

What Congress did in Title I of the 1947 statute was merely to limit the meaning of the definition of "employee" as it was contained in the National Labor Relations Act when enacted in 1935 (49 Stat. 449, 29 U. S. C. 151).

Under the 1935 Act supervisors were within the coverage of that statute for the reason that in the definition of "employee" in Section 2 (3) thereof there was no exception as to them. *Packard Motor Car Co. v. National Labor Relations Board*, 330 U. S. 485.

What Congress did in Title I of the 1947 Act as far as supervisors were concerned, was to continue in effect, in the same section and in the same subsection (Section 2 (3)), the definition of the word "employee," but expressly excluded in the subsection "any individual employed as a supervisor."

The definition of "employee" was not repealed. In general, it was continued in effect. The most that can be said is that the meaning of the word was limited.

3.

Congress, by the express language it used in Title I of the 1947 statute, evidenced the extent to which it intended to keep matters under the National Labor Relations Act prior to amendment in effect after amendment.

Thus in Section 102 of Title I Congress provided that the outlawing of the closed shop and the restrictions on

the union shop, which Congress placed in Sections 8 (a) (3) and 8 (b) (2) "of the National Labor Relations Act as amended by this title," should not make "an unfair labor practice the performance of any obligation under a collective-bargaining agreement entered into prior to the date of the enactment of this Act, or (in the case of an agreement for a period of not more than one year) entered into on or after such date of enactment, but prior to the effective date of this title * * *."

And in Section 103 Congress said that nothing in the Title "shall effect any certification of representatives or any determination as to the appropriate collective bargaining unit, which was made under section 9 of the National Labor Relations Act prior to the effective date of this title, until one year after the date of such certification or if, in respect of any such certification, a collective bargaining contract was entered into prior to the effective date of this title, until the end of the contract period or until one year after such date, whichever first occurs."

Having in Title I expressly continued in effect the foregoing subject matters of the National Labor Relations Act of 1935, it would seem to follow that the intent of Congress was to limit the continuing effect of the provisions of the 1935 Act, as changed by the 1947 Act, solely to the foregoing.

4.

By failing in the 1947 amendments to increase the scope of the power of the Board as respects the contents of Board orders, Congress shows an intention not to have section 29 apply.

In respect to the scope of its order in the instant case, the Board followed its customary practice of requiring (1) that the employer cease and desist; (2) that the dis-

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criminatorily discharged supervisor be reinstated; (3) that he be paid for lost time; and (4) that copies of a notice be kept posted for 60 days.

The power of the Board to so order is found in Section 10 (c) of the Act, as the statute was enacted in 1935. That section provides that, if the Board is of the opinion that any person has engaged in or is engaging in an unfair labor practice, the Board shall issue an order

> "requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *"

The scope of an order to be made by the Board is not enlarged in the 1947 amendment, the same language being retained (Section 10(c) of Section 101).

Certainly if this case had been tried but was awaiting the issuance of a Board order when Title I of the 1947 statute became effective, the power of the Board to issue its order would have been governed by the foregoing portion of Section 10 (c) as contained in the amendments. And, inasmuch as the power of the Board in its orders is limited in respect to affirmative action by statute to such action as will effectuate the purposes of the Act, and inasmuch as the amended Act does not protect supervisors, it must follow that the Board would have been without power to order such affirmative action as reinstatement, back pay, and the posting of the notice. To be specific—as concerns the cease and desist portion of such an order, it would not only be contrary to public policy to so require, but the Board would not make such an order because to do so would be a useless act in that the employer would not be required to heed it, supervisors no longer being covered by the Act.

Such being the situation if the instant case had been tried but was awaiting the issuance of a Board order when Title I of the 1947 Act became effective, it follows that Congress by not extending the power of the Board in respect to Board orders did not intend Section 29 to apply.

There is no reason to believe that Congress had any different intention as to an order of the Board, such as the one in this case, which was issued by the Board before the amendments became effective and was later in the course of litigation in the courts. Congress must have known that it would not now effectuate the policies of the Act to require reinstatement, back pay and posting of the notice, and that the cease and desist portion of the order would not now be in accord with public policy.

So that by failing in the amendments to increase the scope of the power of the Board as respects Board orders, Congress shows an intention not to have Section 29 applicable to a situation such as the instant one.

5.

A contrary conclusion would lead to attributing to Congress an absurd intention.

Supervisors now being excluded from the coverage of the Act, the Budd Company would nevertheless, if the Board's latest contention is correct, now be required under the Board's order to reinstate the foreman and to make up for any loss of pay.

Yet there is no question but that under Title I the petitioner could immediately after offering the foreman employment, discharge him because of his former union activity, or for any other reason, and not be in contempt of court.

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That the statute does not authorize back pay without reinstatement is covered in a subsequent portion of this Reply.

6.

Under its express language, 1 U. S. C. A. 29 is not applicable here.

The common law rule was that on repeal of a statute without any reservation of penalties, all proceedings taken under it fell. *United States v. Reisinger,* 128 U. S. 398, 401.

Section 29, being in contravention of the common law, must be strictly construed. *Ranson v. Williams,* 69 U. S. 313, 318; *Rodgers v. United States,* 6 Cir., 158 F. 2d 835, 836; *United States v. Hark,* D. C. Mass., 49 F. Supp. 95, reversed on other grounds 64 S. Ct. 359; *Moore v. United States,* 8 Cir., 85 F. 465, 470; *United States v. Chambers,* 291 U. S. 217; *United States v. Auerbach,* D. C., S. D., Cal., 68 F. Supp. 776.

Such being true, it is in place to point out that not only in the title of Section 29 but three times in the body of the section Congress speaks of a "statute" being repealed—not some provision in a statute Thus the section is entitled "*Repeal of statutes* as affecting existing liabilities." The first few words of the section are "The repeal of any *statute* shall not have the effect * * *." The penalty, etc., is the one incurred "under such *statute.*" Also "such *statute* shall be treated as remaining in force * * *" In other words, the section is only applicable when a statute as a whole is repealed. That is what Congress has said. At the most, all that can be argued here, if the language of Congress in the 1947 Act in reference to amending the 1935 Act is completely ignored, as well as our other foregoing arguments, is that, as concerns the

Budd case, the 1947 Act by implication repeals the coverage of supervisors in the 1935 Act. Thus, at the most, but a portion of the 1935 Act is actually repealed, and at that only a small part. But Sec. 29, by its expressed language, applies only when a statute is repealed.

In addition, Section 29 states that the repeal of any statute shall not have the effect to release or extinguish any penalty, etc., "unless the *repealing* act shall so expressly provide." In other words, the 1947 Act must be a "repealing act" to have Section 29 applicable. We submit from what we have said above that to call the 1947 Act a "repealing act" would be contrary to the intention of Congress and contrary to the language Congress employed in the 1947 Act.

7.

The portions of the order for which the Board now requests enforcement do not constitute a "penalty, forfeiture, or liability" within the meaning of those words as used in Section 29.

The three words were placed in Section 29 sixty-four years prior to the enactment of the National Labor Relations Act in 1935 and seventy-six years prior to the 1947 amendments. Congress at that time, of course, had had no experience with the kind of legislation contained in the National Labor Relations Act.

Moreover, no private right (liability) attaches under the National Labor Relations Act. *Amalgamated Utility Workers v. Consolidated Edison Company of New York,* 309 U. S. 261, 267; *National Licorice Co. v. National Labor Relations Board,* 309 U. S. 350, 362; *Phelps Dodge Corporation v. National Labor Relations Board,* 313 U. S. 177, 194; *Virginia Electric & Power Co. v. National Labor Relations Board,* 319 U. S. 533, 543.

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Nor do the various portions of a Board's order constitute penalties or forfeitures. The Board does not have punitive jurisdiction. *Consolidated Edison Company v. National Labor Relations Board, supra,* 305 U. S. 197, 235, 236; *Republic Steel Corporation v. National Labor Relations Board,* 311 U. S. 7, 10. It is erroneous to characterize a reimbursement order as penal. *Virginia Electric & Power Co. v. National Labor Relations Board, supra,* 319 U. S. 533, 534. Back pay is not a fine or penalty. *Social Security Board v. Nierotko,* 327 U. S. 358, 364.

8.

United States ex rel. Randall v. United States Marshal for Eastern District of New York, 2 Cir., 143 F. 2d 830, cited by the Board on page 12 of its Memorandum, is not in point. There the Court held (p. 831) that

> "Inasmuch as sentence became final before the repeal of the Eighteenth Amendment became effective it remained binding and capable of enforcement. The commitment was a ministerial and not a judicial act which did not prevent the judgment from becoming final prior to the date of the repeal."

That case dealt with the effect of a repeal and not with an amendment. Further, the sentence had become final before the repeal had become effective—"no application for a writ of certiorari was made within the period allowed by statute" (p. 831). In the case at bar, the decree of the Sixth Circuit had not become final when the act of 1947 became effective. Also the decree here sought to be enforced is not a ministerial but a judicial act.

II.

CONGRESSIONAL HISTORY OF THE LABOR MANAGEMENT ACT, 1947 DOES NOT SUPPORT THE BOARD'S CONTENTION

On page 17 of its Memorandum the Board states that "The history of the Labor Management Relations Act shows that Congress considered but rejected a proposal which would have substituted the common law rule for the rule of statutory construction created by the general savings statute. Thus, a provision of Section 102 (c) of the bill passed by the House, which would have had the effect of prohibiting entry by the Board or enforcement by the courts of any order based on prior unfair labor practices unless the conduct involved continued to be an unfair labor practice under the Amendments, was eliminated in conference (see Section 102 (c) of H. R. 3020, 80th Cong., 1st Sess.; Conference Report, H. Rep. No. 510, 80th Cong., 1st Sess., p. 61)."

In answer, we point out not only that Section 102 (c) of the House Bill was not passed by the Senate or considered by the Senate as a whole, but that the rule is that "when taking the Act as a whole, the effect of the language used is clear to the court, extraneous aid like this can not control the interpretation." *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, 589. See as well *United States v. Shreveport Grain & Elevator Co.,* 287 U. S. 77, 83, approving the foregoing from the *Railroad Commission of Wisconsin* case, and stating that House and Senate committee reports "cannot be resorted to for the purpose of construing a statute contrary to the natural import of its terms."

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Moreover, the fact that the abatement language of the House Bill is not contained in the statute as enacted does not mean that Congress did not intend, under the language it used, that the well accepted rules as to the effect of legislation while a case is pending in the courts should not be applicable. Congress may well have reasoned that those very rules cared for the situation, and that, therefore, the language of the House Bill was surplusage. If words stricken from a bill in one of the legislative houses consttiute surplusage, the action of the legislative body in deleting such wording cannot be used for the purpose of determining legislative intent. This conclusion would seem to follow from *Carey v. Donohue,* 240 U. S. 430, 436, where the question was as to the effect of the Senate striking certain wording from an amendment.

III.

THE BOARD'S POSITION AS TO THE PORTION OF ITS ORDER WHICH SHOULD BE ENFORCED IS INCONSISTENT AND CONTRARY TO THE TERMS OF THE STATUTE

The Board nowhere in its memorandum claims that the foremen here involved are not supervisors within the definition of that word as contained in Section 2 (11) of Section 101 of Title I of the Labor Management Relations Act, 1947 in face of the fact that petitioner in its petition for certiorari alleged they were within the definition, and, beginnning on page 18 of its brief in support of the petition, at length pointed to the finding and uncontradicted evidence to that effect. So that it must be concluded that the Board agrees that these foremen are supervisors as the term is defined in the 1947 amended Act.

The Board's order (R. p. 55) required the petitioner (1) to cease and desist from:

"(a) Discouraging membership in the Foreman's Association of America, by discharging, laying off or refusing to transfer to production jobs any of its supervisory employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of their employment;

"(b) In any other manner interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

The Board's order further requires petitioner (2) to take the following affirmative action *"which the Board finds will effectuate the policies of the Act":* (a) reinstatement (of the foreman) *"to his former or substantially equivalent position* * * *"*; (b) make him whole for any loss of pay; and (c) post and keep posted for 60 days at its plant at Detroit a notice stating (R. p. 57):

"We will not in any manner interfere with, restrain, or coerce our supervisory employees in the exercise of their right to self-organization, to form, join, assist or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"We will offer to Oscar Owens immediate and full reinstatement to his former and substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

"All our supervisory employees are free to become or remain members of the above-named union.

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> We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any supervisory employee because of membership in or activity on behalf of said labor organization."

The Sixth Circuit ordered the Board's order enforced. 162 F. 2d 461.

On page 20 of the Board's Memorandum it is said:

> "The National Labor Relations Board consents to the granting of a writ of certiorari for the purpose of striking from the decree of the court below the cease and desist provisions thereof. Subject to these modifications, it is submitted that the decision below is correct in all respects."

Or, as the Board says on page 10 of its Memorandum, paragraphs 1 (a) and 1 (b) should be stricken.

Petitioner consents to the striking but urges that the Board has not gone far enough.

1.

Thus the Board now consents to striking from its order and the order of the Sixth Circuit all reference, among other things, to petitioner "refusing to transfer to production jobs any of its supervisory employees." We so conclude because that language is contained only in the cease and desist portion of the Board's order. Therefore the matter of such refusal is no longer an issue in this case.

2.

This would erroneously leave in effect all of that portion of the order requiring affirmative action on the part of petitioner—to repeat: (a) reinstatement; (b) back payment; and (c) the posting of the notice.

3.

On page 9 of its Memorandum, the Board states that all of the cease and desist portion of the order should be stricken "Since the cease and desist provisions of the decree below enjoin petitioner from engaging in conduct which is now lawful."

(a) First, as to the posting of the notice. The first and third paragraphs thereof, as noted from the above excerpts from the order, cover the same subject matters as does the cease and desist portion of the order. The language employed by the Board in those paragraphs of its order says to supervisors that they are protected by the National Labor Relations Act in engaging in concerted activities.

But that is not now the law, as the Board admits.

Furthermore, as petitioner has set forth, beginning on page 45 of its brief in support of its petition for certiorari, such information given to supervisors, when they are not protected by law, would frustrate the very object of the original and the 1947 amended Act.

Therefore as far as the first and third paragraphs of the notice are concerned, they should be stricken as well.

(b) The second paragraph of the notice pertains to offering the foreman "full reinstatement to his former and substantially equivalent position," and to making him whole for any loss of pay.

The reasons the paragraph of the notice should be deleted are the same as those which petitioner has advanced, in its brief in support of its position, for striking from the order the requirement of offering reemployment to the foreman to his former or substantially equivalent position, and paying him any loss in wages following his discharge.

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But now there is an additional reason for striking all reference in the order to reinstatement and back pay.

The Board recognizing that under the law it is forced to consent to the striking of the cease and desist portions of the order because such portions "enjoin petitioner from engaging in conduct which is now lawful" (Board's Memorandum, p. 9), should apply the same rule of law to reinstatement and back pay.

Reinstatement and back pay surely operate in the future, just as would the cease and desist portions of the order. The foreman has not been offered reinstatement. There has been no offer to make him whole.

The Board in its Memorandum (p. 19) cites *National Labor Relations Board v. Sandy Hill Iron & Brass Works, supra,* 2 Cir., — F. 2d —, 21 LRRM 2021, for its assertion that back pay operates retrospectively.

The case does not so hold. Back pay was not a primary issue in the case.

It did decide that where the employer "violated the applicable statute both as it was when the order was made and as it is now," a Board order prior to amendment should be enforced, although it said that no portion of the Board's order should be interpreted as preventing statements by the employer now protected under Section 8 (c) of Section 101 of the 1947 statute.

But in the course of its opinion the Court did say:

> "• • • To the extent that the preventative portion of the order may be considered to prohibit conduct that is now lawful, they are not enforceable and cannot be made the basis for contempt proceedings. *United States v. Schooner Peggy,* 1 Cranch. 103, 110; *Ziffrin, Inc. v. United States,* 318 U. S. 73; *N. L. R. B. v. Atkins & Co.,* 7 Cir., Sept. 24, 1947."

The Board (p. 19) also cites *National Labor Relations Board v. Killoren*, 8 Cir., 122 F. 2d 609. But there, again, in holding that "in public interest" back pay is a proveable debt in bankruptcy, the court was dealing with the same statute as that which was in effect when the Board's order was entered.

We repeat, then, that reinstatement and back pay operate *in futuro*.

Moreover, the Board expressly states (R., p. 55) in the portion of its order requiring reinstatement and back pay that it so orders because it finds that such action

> "will effectuate the policies of the Act; * * *"

But the policy of the Act is no longer to protect supervisors.

So that the Board's position as to reinstatement and back pay is not only contrary to the amended Act and contrary to the rule of law it recognizes, but as well is wholly inconsistent.

(c) Of course the reason the Board still insists upon the *useless* act of reinstatement—there is nothing in the law to prevent the foreman's discharge the moment after reinstatement might be offered to him—is that *under the law the Board cannot order back pay without reinstatement.*

Section 10 (c) of Section 101 of the Act as amended provides, as it did prior to amendment, that the Board may order a person who has violated the Act to cease and desist from such unfair labor practices

> "and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of the Act."

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As was said in *National Labor Relations Board v. Carlisle Lumber Co.*, 9 Cir., 99 F. 2d 533, 537, cert. denied 306 U. S. 646:

> "• • • The statute says that the Board may order 'reinstatement of employees with or without back pay.' While the act permits the Board to reinstate with or without back pay, it does not, I think, permit an award of back pay without reinstatement, because the back pay provision is connected with and dependent upon the reinstatement provision. • • • In other words, I think Congress was dealing with causes of obstruction affecting commerce, and not with the relationship of master and servant as such. For these reasons, I decline to follow *Mooresville Cotton Mills v. National Labor R. Board*, 4 Cir., 94 F. 2d 61, 66. It was there said that back pay might be awarded without reinstatement because it 'would not offend the terms of the act, would do justice to the worker, and would tend to effectuate the policies of the act.' I think such a construction offends the terms of the act, and what would effectuate the policies of the act is a legislative question for the Board, subject only to the constitutional prohibitions applicable to all such administrative agencies. It may be that such an order would be said to 'do justice to the employee,' yet I think that the real purpose of the statute was to deal with obstructions affecting commerce and that such purpose must be controlling in a construction of the act.
>
> "The only apparent basis for a construction which would permit 'back pay' without reinstatement is by considering that such power arises from the Board's power to order a person guilty of unfair labor practices 'to take such affirmative action • • • as will effectuate the policies of this Act' independently of the words omitted from the quotation, which are: 'including reinstatement of employees with or without back pay.' I believe that since 'reinstatement' and 'back pay' were singled out for special

> treatment, it was intended that the general words were to be limited thereby."

The foregoing was adhered to by the Ninth Circuit in *National Labor Relations Board v. Hearst*, 102 F. 2d 658, 664.

IV.

REPLY TO BOARD'S STATEMENT THAT NO QUESTION OF GENERAL IMPORTANCE IS RAISED

The Board says in its memorandum (p. 21) that "No question of general importance is raised."

Petitioner does not agree.

In the first place, the Board urges that the Labor Management Relations Act, 1947, is a repeal statute. Petitioner has shown herein that it is an amendatory statute. Certainly there must be many cases now pending involving the distinction, and there can be no question but that the decisions of many future cases will turn on the point.

Secondly, the Board says that no question of general importance is raised because the instant case "is the only one now pending in which the judicial decree was entered before the enactment of the 1947 Act" (p. 20). Yet on page 18 the Board admits that it is holding, as it does now in the case at bar, that "the general savings statute must be deemed to preserve 'all liabilities' arising under the National Labor Relations Act prior to its amendment and that for such purposes the original Act must 'be treated as still remaining in force,' regardless of whether the Amendments to the Act prevent such liabilities from arising in the future." It cites from its own decisions *Matter of Marshall & Bruce Co.*, 75 N. L. R. B., No. 13, and *Matter of Pioneer Electric Co.*, 75 N. L. R. B., No. 14 (both decided October 24, 1947). The Board might also have cited such

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cases as *Matter of Rite-Form Corset Co., Inc.*, 75 N. L. R. B., No. ——, 21 LRRM 1011 (decided November 4, 1947), and *Matter of Plankington Packing Co.*, 75 N. L. R. B., No. ——, 21 LRRM 1018 (decided November 19, 1947).

Moreover, the law to be applied in the instant case, other than that involved in the immediate foregoing paragraphs, is of general importance as we have shown.

CONCLUSION

For the reasons set forth in the petition for certiorari, in the brief in support of the petition, and in this reply petitioner urges that the writ of certiorari should issue as prayed.

Respectfully submitted,

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